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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RYAN L. HUGHES,

Defendant and Appellant.

A145418

(Sonoma County
Super. Ct. No. SCR644014)

Defendant Ryan Hughes appeals from a judgment entered pursuant to a complicated plea deal that resolved a consolidated case involving 41 counts. Defendant initially pleaded no contest to 15 counts, including arson (Pen. Code, § 451)¹ and six counts of second degree burglary (§ 459), and admitted three strikes charged as enhancements. However, before he was sentenced in accordance with the negotiated disposition, two things happened: It was discovered defendant had been misadvised that the arson conviction was not a strike offense, and Proposition 47 was passed.² Both the People and defendant believed these developments made it impossible to implement the intent of the negotiated disposition. Defendant asked to withdraw his plea to the arson charge and to have three of the burglary convictions reduced to misdemeanors in accordance with Proposition 47 and the agreed-to sentence reduced accordingly.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² “ ‘On November 4, 2014, the voters enacted Proposition 47, “the Safe Neighborhoods and Schools Act” (hereafter Propositions 47), which went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).)’ ” (*T.W. v. Superior Court* (2015) 236 Cal.App.4th 646, 649, fn. 2 (*T.W.*).)

Defendant also stated, however, that “[g]iven the impact of Proposition 47 and the error involving the arson strike, the goal should be to place the People as close to their original positions as possible.” The People, in turn, took the position defendant had to withdraw his plea in its entirety and agreed the misinformation as to the arson conviction was a sufficient basis to do so.

Realizing that neither party was going to obtain the benefit of the negotiated disposition they had intended, the trial court gave the parties two options: allow withdrawal of the plea in its entirety and send the case on for trial; or allow withdrawal of the plea in its entirety, followed by a new negotiated disposition involving pleas to other charges that would achieve the intent of the original disposition as closely as possible (i.e., would result in a 26-year determinate, rather than a 25-to-life indeterminate, sentence). The court continued the matter to give defendant sufficient time to decide what he wanted to do. Defendant chose to enter into a new plea deal, and the trial court thereafter imposed a 26-year aggregate determinate sentence. Defendant filed a notice of appeal, identifying the only issue as the trial court’s “denial of Prop. 47 application to [defendant’s] pleas.” He also requested, and was granted, a certificate of probable cause on this issue.

Defendant’s appellate counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal of the order. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) Defendant was notified of his right to file a supplemental brief and sent a letter to the court asking that his “disease of drug and alcohol addiction” be considered “as part of” his appeal.

The record relevant to the instant appeal is that pertaining to defendant’s motions to withdraw his guilty plea to the arson charge and to have three of his original burglary convictions reduced to misdemeanors under Proposition 47. We fail to see any error in the trial court’s handling of these motions. It appears that what defendant at one point hoped to accomplish by filing both a motion to withdraw his plea to the arson charge and a motion to reduce three of the burglary convictions to misdemeanors under

Proposition 47 was to rid himself of those portions of the plea deal he did not like (the arson strike conviction and the three burglary convictions that subsequently became eligible convictions under Proposition 47) and to keep the remainder of the deal he did like (that avoided a 25years-to-life indeterminate sentence). We are aware of no law that entitles a defendant to accomplish this kind of cherry-picking amongst the provisions of a negotiated disposition.³

Defendant was given ample time to decide what he wanted to do following the withdrawal of his plea, and he was fully advised and voir dired by the trial court in taking his new guilty pleas to the renegotiated disposition. The court sentenced defendant in accordance with that negotiated disposition, and duly awarded credit for time served and good conduct credits, and imposed fines and fees.

After review of the relevant record, we find no arguable issues and affirm the judgment.

³ This is not a case, then, in which the trial court erred in refusing to recall a sentence under Proposition 47 solely because it was imposed pursuant to a negotiated disposition. (See *T.W.*, *supra*, 236 Cal.App.4th at pp. 651–653.)

Banke, J.

We concur:

Humes, P. J.

Margulies, J.

A145418, *People v. Hughes*